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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON

DEPT. OF TRANSPORTATION

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Joint Application of

UNITED AIR LINES, INC.

and

AIR NEW ZEALAND LIMITED

under 49 U.S.C. §§ 41308 and 41309)
for approval of and antitrust)
immunity for alliance agreements)

Docket OST-99-

6080-2

**MOTION OF AIR NEW ZEALAND LIMITED
FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. §302.39**

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DATED: December 17, 1999

BEFORE THE
MENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of

UNITED AIR LINES, INC.

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Docket OST-99-

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MOTION OF AIR NEW ZEALAND LIMITED
FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.39

Air New Zealand Limited ("Air New Zealand"), pursuant to Rule 39 of the Department's Rules of Practice (14 C.F.R. § 302.39), requests that the Department withhold from public disclosure the confidential, proprietary and commercially sensitive information Air New Zealand is filing concurrently under seal in the above-captioned proceeding. Air New Zealand is submitting these confidential documents to facilitate the Department's processing of the joint application of United and Air New Zealand Limited for approval of and antitrust immunity for their alliance agreements filed herewith. In support of this request, Air New Zealand submits the following:

I. AIR NEW ZEALAND'S CONFIDENTIAL DOCUMENTS ARE PROTECTED FROM PUBLIC DISCLOSURE BY THE FREEDOM OF INFORMATION ACT.

The confidential documents Air New Zealand is filing in conjunction with its joint application with United for antitrust immunity are protected from public disclosure under various exemptions of the Freedom of Information Act ("FOIA"), including 5 U.S.C. 552(b) (3) and 5 U.S.C. 552(b) (4). Exemption (4) protects from public disclosure "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." FOIA exempts from disclosure information that is not of the type typically released to the public, where the release would cause substantial harm to the competitive position of the person submitting the information. See, e.g., Gulf & Western Industries, Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1980); National Parks & Conservation Ass'n v. Kleppe, 547 F.2d 673, 684 (D.C. Cir. 1976); and Joint Application of United and Lufthansa, Order 93-12-32 (December 18, 1993).

The documents for which Air New Zealand requests confidential treatment are: (i) Exhibit NZ-1, "Air New Zealand's Top O&D Markets Involving a U.S. Point," gleaned from Air New Zealand internal data; and (ii) documents responsive to the information requests the Department has issued in recent antitrust immunity proceedings, as detailed in Exhibit JA-9 to

the United/Air New Zealand joint application for antitrust immunity.

These documents filed under seal qualify for exemption from public disclosure under the above-detailed standard. The documents relate to commercially sensitive and proprietary business, financial and corporate matters; they were obtained from a private citizen; and they are not of the type generally released to the public. Air New Zealand would suffer substantial competitive harm if the documents were publicly disclosed. Because the documents are fully encompassed by this standard, and in order to fulfill a central purpose of the FOIA exemption -- to encourage private citizens to provide the government with information not typically made public -- protection of Air New Zealand's documents is fully warranted here.¹

II. ACCESS TO AIR NEW ZEALAND'S CONFIDENTIAL AND PROPRIETARY DOCUMENTS SHOULD BE LIMITED TO COUNSEL AND OUTSIDE EXPERTS.

Due to the nature of the documents Air New Zealand has filed, Rule 39 access should be limited to counsel and outside experts that file an affidavit stating that they will (1) use the

¹ Public disclosure of such information could impair the Government's ability to obtain necessary information in the future or cause substantial harm to the competitive position of the person from whom the information was obtained. See, National Parks & Conservation Ass'n, supra, at 770; Burke Energy Corp. v. DOE, 583 F. Supp. 507, 510 (D. Kansas 1984).

information only for the purpose of participating in this proceeding; and (2) not disclose the information to anyone other than counsel or outside experts who have filed a valid affidavit with the Department.

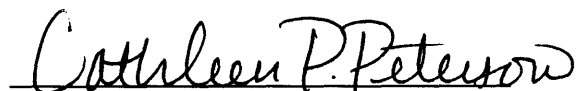
The documents Air New Zealand has filed under Rule 39 contain highly sensitive commercial information relating to international strategy, performance and planning. In order to protect Air New Zealand's ability to compete effectively in international markets, it is imperative that this information not be disseminated to Air New Zealand's competitors, even under Rule 39 procedures. In recent years, the Department has routinely limited Rule 39 access to such data filed in the course of antitrust proceedings to counsel and outside experts. See, e.g., Joint Application of Alitalia-Linee Aeree Italiane-S.p.A., KLM Royal Dutch Airlines and Northwest Airlines, Inc. (Docket OST-1999-5674), *Scheduling Notice and Initial Determination on Motion for Confidential Treatment Under 14 C.F.R. 302.39* (July 19, 1999); and Joint Application of United Air Lines, Inc. and Air Canada (Docket OST-96-1434), *Notice Granting Access to Documents* (July 11, 1997). By limiting access in this manner, the Department can both permit parties to fully participate and deter the competitive harm that would result if the information were disseminated among Air New Zealand's competitors.

Motion of Air New Zealand, Inc.

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WHEREFORE, for the foregoing reasons, the Department should grant Air New Zealand's motion to withhold from public disclosure the confidential, proprietary and commercially sensitive information that Air New Zealand has filed under seal; limit Rule 39 access to counsel and outside experts as described above; and grant such other and further relief as the Department deems necessary.

Respectfully submitted,

A handwritten signature in black ink, reading "Cathleen P. Peterson". The signature is written in a cursive style with a horizontal line underneath.

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DATED: December 17, 1999